



The Voice of Rural Telecommunications

EX PARTE OR LATE FILED

April 14, 1998

Ms. Magalie R. Salas, Secretary
Federal Communications Commission
1919 M Street, N.W., Room 222
Washington, D.C. 20554

RECEIVED

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

Re: Ex Parte Notice
CC Docket No. 96-45
AAD/USB File No. 98-37

Dear Ms. Salas:

On April 13, David Cosson, Kraskin, Lesse and Cosson, LLP, and the undersigned participated in a discussion with Irene Flannery and Jane Whang of the Common Carrier Bureau's Accounting Policy Division. At that meeting, we discussed NTCA's comments opposing the request of the Iowa Telecommunications and Technology Commission for a determination that the Iowa Communications Network (ICN) is eligible to receive direct reimbursement as a common carrier. We also reviewed a handout titled NTCA RESPONSES TO ICN EX PARTE WITH TOM POWER (3/24/98) and a letter dated February 25, 1998 from Ted Stilwill, State of Iowa, Department of Education, to School District Superintendents.

In accordance with the ex parte rules, I have attached a copy of the material provided to Commission participants during the meeting. If there are any questions in this matter, please contact me at NTCA.

Sincerely,

R. Scott Reiter
Senior Industry Specialist
Legal and Industry Division

Attachments

cc (w/o attachments): Irene Flannery
Jane Whang

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E. AGDE

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April 13, 1998

NTCA RESPONSES TO ICN EX PARTE WITH TOM POWER (3/24/98)

I Facts

A. ICN: LECs did not respond to RFP

Record/facts: There were three rounds of RFPs. The independent LECs in Iowa were very interested to offer a state network. Iowa Network Services (INS), a consortium of 132 independent LECs, responded to the original proposal, which was awarded to Teleconnect, appealed by losers and overturned by the court. The second round ended with the state rejecting all bids (too expensive). A third RFP contained certain bonding requirements which made it untenable for INS to bid. In the end the state formed ICN and built its own network. Even after the state built the network INS offered to purchase the network from the state at cost.

B: ICN: Distance learning available to all entities that provide instruction.

Record: Service is limited to public schools, accredited non public schools and non-profit higher education. Are there non-accredited K-12 schools? Distance learning is not a communications service, the communications service is two-way video transmission, which ICN offers only to those entities, but does not offer to other, non-authorized entities even though they may have use for it, say for video conferencing.

II Law

A. ICN: is not seeking reconsideration contrary to its claim

Reply: In response to ICN's reconsideration petition, the Fourth Order *explicitly held* that state networks do not meet the definition of telecommunications carrier. ICN had two previous opportunities to allege facts supporting its contention that it is a carrier. The only new fact is that ICN now agrees to contribute to the federal universal service support mechanism . ICN can't avoid reconsideration rules by styling request as a declaratory ruling; it can't obtain reconsideration without showing new facts and explaining why those facts were not previously provided. It has done neither.

B. ICN: ICN's characteristics differ from the state telecommunications networks discussed by FCC.

Reply: The essential characteristic cited by Commission, based on a record including ICN's own description of its characteristics, was that the networks in question, including ICN, offer service only to "specified classes of users" and not to all potential users. ICN's logic would make the common carrier concept meaningless by allowing an entity to limit its class of users and then claim other users are not potential users because it refuses to serve them.

C. ICN: Common carriers historically have been able to choose to serve only particular types of customers.

Reply: Carriers may choose to serve only those customers for which its services are suitable, but cannot pick and choose among those who are able to use the services on the basis of their status. ICNs services are suitable for use by other than its authorized users.

D. ICN: ICN will comply with all common carrier obligations.

Reply: ICN cannot meet the most basic common carrier requirement: to provide service to all who request it.



TERRY E. BRANSTAD, GOVERNOR

DEPARTMENT OF EDUCATION
TED STILWILL, DIRECTOR

MEMORANDUM

DATE: February 25, 1998
TO: School District Superintendents
FROM: Ted Stilwill, Director
SUBJECT: ICN Information for Universal Service Fund (E-Rate) Applications

The purpose of this memo is to provide you with additional information to help you complete the FCC Form 471 "Schools and Libraries Universal Service Services Ordered and Certification Form" application, which can be submitted as soon as 28 days following your initial 470 application. Specifically, I wanted to provide information about your ICN video rate discount.

As you recall, in an earlier memo this month I discussed listing the ICN video rate on the 471 application form as the actual non-subsidized rate instead of the \$5.00 per hour figure. Using the non-subsidized rate will help the State of Iowa recoup some of its ICN operating costs. I said that I would provide you with that cost figure once it was available. The amount that has been provided by the ICN is \$74.82 per hour. The method for determining this cost has been reviewed by ICN legal counsel. I am asking each of you to use that figure when calculating your ICN video rate costs for 1998.

Be assured, however, that listing the non-subsidized rate will not affect your actual USF discount for ICN use. Let me give an example. If your school is at the 50% discount level, by listing the ICN hourly cost as \$74.82, your actual ICN hourly cost that you will be charged from the ICN will be \$37.41 instead of the \$5.00 pre-USF rate. In other words, both your district and the ICN benefit.

This information should be listed under "Telecommunications Services" under Column 9 of Item 15 in Block 5 of the 471 application form. You will need to estimate your total estimated monthly usage of ICN and multiply \$74.82 times the total estimated monthly hours of usage and then enter that figure.

For all other ICN related services (i.e. Internet, Telephone, etc.) use the rate you are currently being charged from the ICN. This rate can also be found on the ICN rate chart.

Additional Information For Schools Adding ICN Sites During 1998

If you are installing an ICN classroom this year you are also eligible for certain discounts. In addition, the State of Iowa can also recoup some of its installation costs associated with connecting your classroom. These figures are as follows:

- a.) Eligible costs for classroom installation. This information has been supplied to your AEA, and is referenced as the "Sony Contract" costs. Entering these costs will result in a discount that is provided to you for installing your ICN classroom equipment and cabling. Under Column 1 of Item 16 in Block 5 list "Sony Corporation" and then enter the cost on the Internal Connection line of Column 8.
- b.) Eligible costs for the State portion of the fiber and FOT installation for your classroom. The State will receive the discount for this portion. This portion does not represent any expenditures from your budget. You can find this cost at http://www3.ism.org/iowa_database/ (the Iowa Data Base Web site). Look under "What's New" and click on Universal Service Fund Information. Select your merged area, find your institution, and look under the column labeled "Connection Type." Under Column 1 of Item 16 in Block 5 enter Iowa Communications Network. Enter the following information on the Internal Connections line of Column 8:

Connection Type

Enter This Amount

Fiber

DS3 or anything else

Thank you for your consideration and support for this activity. As always, should you need additional assistance in completing any part of the USF application process please contact your local Area Education Agency.

c: Area Education Agencies

USF-